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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,625	05/01/2006	Ronald Quigley	54576-8	3726
23971 7590 01/06/2010 BENNETT JONES LLP C/O MS ROSEANN CALDWELL 4500 BANKERS HALL EAST 855 - 2ND STREET, SW CALGARY, AB T2P 4K7 CANADA				
EXAMINER				
ING, MATTHEW W				
ART UNIT		PAPER NUMBER		
3637				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/595,625

**Applicant(s)**

QUIGLEY ET AL.

**Examiner**

MATTHEW W. ING

**Art Unit**

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 30-32, 34, 35, 39, 41, 43-45 and 52-67 is/are pending in the application.
- 4a) Of the above claim(s) 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-32, 34, 35, 39, 41, 44, 45 and 52-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/29/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species 7 in the reply filed on 8/27/09 is acknowledged.
2. Claim 43 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Whereas a locator is only shown (in Fig. 1) and discussed (in par. 65) with respect to a nonelected species (i.e., Species 6, Figs. 8A & 8B), this claim is therefore viewed as being drawn to a nonelected species. Election was made **without** traverse in the reply filed on 8/27/09.

### ***Information Disclosure Statement***

3. The information disclosure statement (IDS) submitted on 6/29/06 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claim 30 fail(s) to recite sufficient structural elements and interconnection of the elements to positively position and define the structure(s) & component(s) whereby wall is

rendered "resistant to passage therethrough of flying debris", so that an integral structure able to function as claimed is recited.

7. Regarding claim 35, the term "the backside" in line 2 lacks antecedent basis in the claim.
8. Regarding claim 52, the term "the desktop" in line 2 lacks antecedent basis in the claim.
9. Regarding claim 39, the dependence of this claim upon cancelled claim 37 renders the scope of this claim indefinite by the failure to specify the claim from which it depends. For the purposes of examination, the examiner is considering claim 39 to depend from claim 30.

#### ***Double Patenting***

10. Applicant is advised that should claim 65 be found allowable, claim 66 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

#### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
13. Claims 30-32, 34, 39, 41, 45, 53-64, & 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wulff (3,437,057) in view of Griffin (312,349) & Carstens (3,298,329).
14. Wulff teach(es) the structure substantially as claimed, including a work surface (11) including an upper surface and an underside and defining a plane, the work surface supportable at a work level forming a space at the underside of the work surface; a panel (28) positionable in the space at the underside of the work surface, the panel including a curved outer surface (outer surface of 28) and a wall (remainder of 28); a substructure to support the wall, the substructure including a plurality of spaced apart upright members (26) connected below and extending down from the underside of the work surface and positioned to define a side to side concave curvature on a backside opposite the outer surface. It is noted that the term "curvature" can be read as referring to an imaginary curved plane.
15. The only difference between Wulff and the invention as claimed is that Wulff fail(s) to teach a wall resistant to passage therethrough of flying debris; and upright members formed as multi-walled tubulars each including an outer tube with an inner surface opening to a inner, longitudinal bore, a first tube installed in the inner longitudinal bore of the outer tube, a space formed between the first tube and the inner surface of the outer tube and a shock absorbing filler material in the space.
16. Carstens, however, teaches making a wall (14) resistant to passage therethrough of flying debris. Additionally, Griffin teaches forming an upright member (Fig. 2) as a multi-walled tubular including an outer tube (D) with an inner surface opening to a inner, longitudinal bore, a

first tube (A) installed in the inner longitudinal bore of the outer tube, a space formed between the first tube and the inner surface of the outer tube and a shock absorbing filler material (C) in the space.

17. It would have been obvious to one of ordinary skill in the art to form the upright members of Wulff as multiwalled tubulars, as taught by Griffin, in order to provide fire resistance thereto (as suggested by p. 1, lines 69-70 of Griffin); and to make the wall of Wulff resistant to debris, as taught by Carstens, in order to provide protection to users in the event of criminal activity (as suggested by Carstens), thereby providing the structure substantially as claimed.

18. Regarding claim 31, Wulff teaches a panel (28) extending substantially vertically below the underside of the work surface (11).

19. Regarding claim 32, Wulff teaches a curved outer surface (outer surface of 28) curved from side to side on the panel (28).

20. Regarding claim 34, Wulff teaches a wall (remainder of 28) following the curved outer surface (outer surface of 28).

21. Regarding claim 39, Wulff teaches a wall (remainder of 28) supported (i.e., via the floor) on the outwardly curved side of panel (28) and outwardly of the frame.

22. Regarding claim 41, Wulff teaches a reinforcement frame (22, 27) extending along the underside of the work surface to reinforce the work surface and the reinforcement frame is connected to the substructure (26).

23. Regarding claim 45, Carstens teaches a wall including a sheet metal anti-ballistic material (col. 2, lines 7-8).

24. Regarding claim 53, Wulff teaches an under-desktop protection panel comprising a substructure selected to act against vertical compression thereof, the substructure including an upper flange (23), a lower flange (31) defining an base of the protective panel, a plurality of spaced apart upright members (26) connected between the upper flange and the lower flange and positioned to define a side to side concave curvature on a backside of the protection panel. It is noted that the term "curvature" can be read as referring to an imaginary curved plane. Additionally, Griffin teaches an upright member formed as a multiwalled tubular including an outer tube (D) with an inner surface opening to a inner, longitudinal bore, a first tube (A) installed in the inner longitudinal bore of the outer tube, a space formed between the first tube and the inner surface of the outer tube & filled with a shock absorbing filler material (B, C).
25. Regarding claim 54, Wulff teaches a first tube (A) includes an inner axial bore and the shock absorbing filter material (B) also fills the inner axial bore.
26. Regarding claims 55-56, Griffin teaches a shock absorbing material (B, C) including sand & cement (p. 1, lines 87-89 & 93-94). Whereas the term "cement" is commonly defined as meaning "a binder, glue, or adhesive", it is submitted that silicate of soda (as taught by Griffin) can therefore be considered a "cement".
27. Regarding claims 57-59, Wulff teaches a plate material web (22, 27) connected between adjacent upright members & positioned adjacent the upper (23) & lower (31) flanges.
28. Regarding claim 60, Wulff teaches a gusset (27) secured between the upper flange and an upright member.

29. Regarding claims 61-62, Wulff teaches a top plate (11) forming a roof spanning across the side to side concave curvature on the backside; said top plate (11) being an extension of the upper flange.

30. Regarding claim 63, Wulff teaches a wall of material (28) supported by the substructure, such that spaces between the plurality of uprights are spanned by the wall of material. Additionally, Carstens teaches a wall (14) having anti-ballistic properties.

31. Regarding claim 64, Wulff teaches a front side (front surface of 28) opposite the backside and wherein the wall of material is positioned against the front side.

32. Regarding claim 67, Wulff teaches a connection to a support frame (22, 27) for a desktop.

33. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wulff (3,437,057), Griffin (312,349) & Carstens (3,298,329) as applied to the claim(s) above, further in view of Dodd (EP 619,989). Wulff, Griffin, & Carstens teach(es) the structure substantially as claimed, including a panel (28). The only difference between Wulff, Griffin, & Carstens and the invention as claimed is that Wulff, Griffin, & Carstens fail(s) to teach a panel further including a cushioning layer on the backside. Dodd, however, teaches the inclusion of a cushioning layer (4) on the backside of a panel (2). It would have been obvious to one of ordinary skill in the art to include a cushioning layer, as taught by Dodd, on the backside of the panel of Wulff, as modified, in order to prevent injury to the users thereof (as suggested by col. 1, lines 6-7 of Dodd), both in ordinary use (e.g., if a user bumps into said panel) or emergencies, thereby providing the structure substantially as claimed.

34. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wulff (3,437,057), Griffin (312,349) & Carstens (3,298,329) as applied to the claim(s) above, further in



view of Dunbar (5,200,256). Wulff, Griffin, & Carstens teach(es) the structure substantially as claimed, including a wall (28). The only difference between Wulff, Griffin, & Carstens and the invention as claimed is that Wulff, Griffin, & Carstens fail(s) to teach a wall including a flexible, sheet-form, anti-ballistic material. Dunbar, however, teaches the inclusion, in or upon a wall, of flexible, sheet-form, anti-ballistic material (12). It would have been obvious to one of ordinary skill in the art to include flexible anti-ballistic material within or upon the wall of Wulff, as modified, in order to improve the anti-ballistic materials thereof (as suggested by Dunbar), thereby providing the structure substantially as claimed.

35. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wulff (3,437,057), Griffin (312,349) & Carstens (3,298,329) as applied to the claim(s) above, further in view of Bonham (5,271,338). Wulff, Griffin, & Carstens teach(es) the structure substantially as claimed, including a seam at an interface of the underside of a desk top (11) and the substructure (of which the frame between 11 & 21 is considered a portion). The only difference between Wulff, Griffin, & Carstens and the invention as claimed is that Wulff, Griffin, & Carstens fail(s) to teach a polymer coating adhered to the underside of the desk top and the substructure and extending over and spanning the seam. Bonham, however, teaches the inclusion of a polymer coating (24) adhered to the underside of a desk top (16) and substructure (20) and extending over and spanning the seam therebetween. It would have been obvious to one of ordinary skill in the art to add a polymer coating, as taught by Bonham, to the structure of Wulff, as modified, in order to prevent damage thereto (as suggested by col. 4, lines 66-68 of Bonham), thereby providing the structure substantially as claimed.

36. Claims 65-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wulff (3,437,057), Griffin (312,349) & Carstens (3,298,329) as applied to the claim(s) above, further in view of Kifer (6,367,857). Wulff, Griffin, & Carstens teach(es) the structure substantially as claimed, including a lower flange (31 of Wulff). The only difference between Wulff, Griffin, & Carstens and the invention as claimed is that Wulff, Griffin, & Carstens fail(s) to teach apertures through the lower flange to allow for fastener connection to a floor. Kifer, however, teaches the inclusion of apertures (80) through a lower flange (32) to allow for fastener connection to a floor. It would have been obvious to one of ordinary skill in the art to include apertures, as taught by Kifer, in the lower flange of Wulff, as modified, in order to permit fastener connection thereof to a floor (as suggested by Kifer), thereby providing the structure substantially as claimed.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW W. ING whose telephone number is (571)272-6536. The examiner can normally be reached on Monday through Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MWI  
12/3/2009  
/José V. Chen/  
Primary Examiner, Art Unit 3637